

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

CHARLES N. WATSON, JR.,	)	CASE NO. 4:07 CV 3713
	)	
Petitioner,	)	JUDGE PETER C. ECONOMUS
	)	
v.	)	
	)	<u>MEMORANDUM OF OPINION</u>
STATE OF MAINE, et al.,	)	<u>AND ORDER</u>
	)	
Respondents.	)	

On December 4, 2007, petitioner pro se Charles N. Watson, Jr., an inmate at the Federal Correctional Institution at Elkton, filed this mandamus action against the State of Maine and the United States of America. The complaint states that Watson was "prosecuted under a fictitious name included in an Information Complaint, as well as other Dockets referenced under the State of Maine Bureau of Identification, (SBI) File No. J-6882 and corresponding FBI File No. 306215-P3, which includes Petitioners present federal sentence under Docket No. CR-93-60-P/C, and State of Maine Docket No. CR-87-2281, which has been used to enhance the present federal sentence." Complaint, p.3. Petitioner seeks an order vacating his state of Maine criminal convictions and reversing a Cumberland County Superior Court civil judgment. He further seeks the cancellation of a detainer "lodged against Petitioner's Federal Bureau of Prisons file." Complaint, p.33.

Although pro se pleadings are liberally construed, Boag v. MacDougall, 454 U.S. 364, 365 (1982) (per curiam); Haines v. Kerner, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable in law or fact.<sup>1</sup> Neitzke v. Williams, 490 U.S. 319 (1989); Lawler v. Marshall, 898 F.2d 1196 (6th Cir. 1990); Sistrunk v. City of Strongsville, 99 F.3d 194, 197 (6th Cir. 1996).

The common law writ of mandamus, codified at 28 U.S.C. § 1361 provides, "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. The extraordinary remedy of mandamus will only issue when a petitioner shows that right to the issuance of the writ is clear and undisputable. In Re Bendectin Prod. Liab. Litig., 749 F.2d 300, 303 (6th Cir. 1984). The Supreme Court has determined that the a mandamus action under 28 U.S.C. § 1361 provides a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty. Heckler v. Ringer, 466 U.S. 602, 616 (1984); Michigan Ass'n of Homes and Services for the Aging, Inc. v. Shalala, 127 F.3d 496,

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<sup>1</sup> A claim may be dismissed sua sponte, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. McGore v. Wigglesworth, 114 F.3d 601, 608-09 (6th Cir. 1997); Spruytte v. Walters, 753 F.2d 498, 500 (6th Cir. 1985), cert. denied, 474 U.S. 1054 (1986); Harris v. Johnson, 784 F.2d 222, 224 (6th Cir. 1986); Brooks v. Seiter, 779 F.2d 1177, 1179 (6th Cir. 1985).

503 (6th Cir. 1997).

Plaintiff is essentially challenging the validity of his current confinement. When a prisoner challenges "the very fact or duration of his physical imprisonment, ... his sole federal remedy is a writ of habeas corpus." Preiser v. Rodriguez, 411 U.S. 475 (1973). Further, there is no legal basis for this court to issue a writ of mandamus against a state official to perform a legal duty required by state law.

Accordingly, this action is dismissed under 28 U.S.C. § 1915(e). The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

S/Peter C. Economus - 1/30/08  
PETER C. ECONOMUS  
UNITED STATES DISTRICT JUDGE